

Notice of Allowability

Application No.

10/754,155

Examiner

Amee A. Shah

Applicant(s)

MCMULLEN ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE of 1/29/07.
2. ☒ The allowed claim(s) is/are 1-16, 18-23, 25-41, 43-46.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


YOGESH C. GARG
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600

DETAILED ACTION

Claims 1-16, 18-23, 25-41 and 43-46 are pending in this action.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 29, 2007, has been entered.

Response to Arguments

Applicant's arguments, see Remarks, filed January 29, 2007, with respect to the declarations of the inventors and David G. Parkhurst overcoming the Deal reference have been fully considered and are persuasive. The rejections of claims 1-16, 18-23, 25-41 and 43-46 have been withdrawn.

The declarations of the inventors and David G. Parkhurst, filed on October 27, 2006, and January 29, 2007, respectively, under 37 CFR 1.131 is sufficient to overcome the Deal reference. In particular, the inventors' declaration is sufficient to establish a conception of the invention prior to the effective date of the Deal reference. The inventors' declaration together with Parkhurst's declaration is sufficient to establish diligence from a date prior to the date of reduction to practice of the Deal reference to either a constructive reduction to practice or an actual reduction to practice.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the Title:

The title has been amended as follows:

~~Store with Interactive Merchandising System and Method of Operation~~ Methods And Systems For Selling Products In A Home Improvements Or Commercial Construction Retail Store

In the Claims:

Claim 43 has been amended because it depended from claim 42, which was previously cancelled, and a claim cannot depend from a cancelled claims. It has therefore been amended to be a dependency of independent claim 27, so that it reads as follows:

The method of claim 27 42, wherein the information disseminated includes descriptions of tools and products provided by the seller and adapted for performing specific phases of the project for a specific type of tile or stone in a specific environment.

REASONS FOR ALLOWANCE

Claims 1-16, 18-23, 25-41 and 43-46 are allowed.

The following is an examiner's statement of reasons for allowance:

Claim 1:

The prior art of record neither anticipates nor fairly and reasonably teaches the system of claim 1 for selling products in a home improvement or commercial construction store. In particular, the prior art does not anticipate nor fairly and reasonably teach a system comprising an interactive display for disseminating information in response to requests by a user, the information including information regarding phases of a project and information regarding the seller's products adapted for use in performing phases of the project, wherein the project is installing tile or stone and the phases of the project include preparing the area, setting the tile or stone, grouting the tile or stone and maintaining the installed tile or stone, and a visual display of the seller's products adapted for use in performing phases of the project, the products grouped on a plurality of shelves of the store according to the corresponding phase of the project for which the seller's products are adapted and having indicia for identifying the seller's products with the corresponding phase of the project, wherein the information disseminated by the interactive display is coordinated with the grouping of the seller's products on the shelves of the store and the indicia to facilitate selection and use of the seller's products for performing the corresponding phases of the project.

The closest prior art is Deal, US 2005/0044011 A1 (hereinafter referred to as "Deal"), referred to in the previous office actions, and overcome by applicant's declarations. Deal teaches a system for selling products in a home improvement or commercial construction store, comprising: an interactive display for disseminating information in response to requests by a user, the information including information regarding phases of a project, i.e. lower level groupings, and information regarding the seller's products adapted for use in performing phases of the project, i.e. subcategories of merchandise (§0020), and a visual display of the seller's products adapted for use in performing phases of the project, i.e. a graphical representation of the products and store shelves displayed on the interactive display (§§0020-0023).

However, Deal does not anticipate nor fairly and reasonably teach the products grouped on a plurality of shelves of the store according to the corresponding phase of the project for which the seller's products are adapted and having indicia for identifying the seller's products with the corresponding phase of the project wherein the information disseminated by the interactive display is coordinated with the grouping of the seller's products on the shelves of the store and the indicia to facilitate selection and use of the seller's products for performing the corresponding phases of the project.

Another remarkable prior art is www.Lowes.com, archived at web.archive.org and dated Nov. 25, 2002 (hereinafter referred to as "Lowes.com"), discussed in previous office actions. Lowes.com teaches a system for buying home improvement tools and services online, including providing instructions on performing home improvement projects including installing tile or stone with the phases involved and disseminating information regarding their products for use in

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performing phases of the product (see pages 4-16). However, Lowes.com does not anticipate nor fairly and reasonably teach the products grouped on a plurality of shelves of the store according to the corresponding phase of the project for which the seller's products are adapted and having indicia for identifying the seller's products with the corresponding phase of the project wherein the information disseminated by the interactive display is coordinated with the grouping of the seller's products on the shelves of the store and the indicia to facilitate selection and use of the seller's products for performing the corresponding phases of the project.

Another remarkable prior art is Heisler et al., US 2001/0044749 A1 (hereafter referred to as "Heisler"), discussed in previous office actions. Heisler teaches a system for the complete design and identification of materials and tools for home improvement projects, including disseminating descriptions of tools and products available from the seller for use in specific phases of the project and instructional presentations regarding how to perform a specific phase of the project (§0021). However, Heisler does not anticipate nor fairly and reasonably teach the products grouped on a plurality of shelves of the store according to the corresponding phase of the project for which the seller's products are adapted and having indicia for identifying the seller's products with the corresponding phase of the project wherein the information disseminated by the interactive display is coordinated with the grouping of the seller's products on the shelves of the store and the indicia to facilitate selection and use of the seller's products for performing the corresponding phases of the project.

Another remarkable prior art, not discussed previously, is Freeman, US 6,950,826 B1 (hereafter referred to as "Freeman"). Freeman teaches a system for facilitating the ordering of construction supplies wherein a customer can order supplies by phases of a project (e.g. Fig. 2 and col. 5, line 44 through col. 6, line 25). However, in Freeman, the user uploads the material information and Freeman does not anticipate nor fairly and reasonably teach the products grouped on a plurality of shelves of the store according to the corresponding phase of the project for which the seller's products are adapted and having indicia for identifying the seller's products with the corresponding phase of the project wherein the information disseminated by the interactive display is coordinated with the grouping of the seller's products on the shelves of the store and the indicia to facilitate selection and use of the seller's products for performing the corresponding phases of the project.

Claims 2-16 and 18-21.

Claims 2-16 and 18-21 are dependencies of independent claims 1 and are allowable over the prior art for the reasons identified above with respect to claim 1.

Claim 22.

Claim 22 recites an article of manufacture of a system for selling products in a home improvement or commercial construction retail store comprising a kiosk with an interactive display, a printer, and a visual display. The system is consistent with and parallel to the functionalities and limitations of claim 1. This system is allowable over the prior art for reasons consistent with those identified above with respect to claim 1.

Claims 23, 25 and 26.

Claims 23, 25 and 26 are dependencies of independent claim 22 and are allowable over the prior art for the reasons identified above with respect to claim 22.

Claim 27.

Claim 27 recites a method of providing a visual display of a seller's products in a home improvement or commercial construction store. The method comprises steps that are consistent with and parallel to the functionalities and limitations of claim 1. This method is allowable over the prior art for reasons consistent with those identified above with respect to claim 1.

Claims 28-41 and 43.

Claims 28-41 and 43 are dependencies of independent claim 27 and are allowable over the prior art for the reasons identified above with respect to claim 27.

Claim 44.

Claim 44 recites a method of providing a visual display of a seller's products in a home improvement or commercial construction store. The method comprises steps that are consistent with and parallel to the functionalities and limitations of claim 22. This method is allowable over the prior art for reasons consistent with those identified above with respect to claim 22.

Claims 45 and 46.

Claims 45 and 46 are dependencies of independent claim 44 and are allowable over the prior art for the reasons identified above with respect to claim 44.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Heisler et al., CA 2338926 A, discloses a method and system for the complete design and identification of materials and tools for home improvement projects (see, e.g., Abstract, Figs. 1 and 5, and pages 3-12), but does not anticipate nor fairly and reasonably teach the products grouped on a plurality of shelves of the store according to the corresponding phase of the project for which the seller's products are adapted and having indicia for identifying the seller's products with the corresponding phase of the project wherein the information disseminated by the interactive display is coordinated with the grouping of the seller's products on the shelves of the store and the indicia to facilitate selection and use of the seller's products for performing the corresponding phases of the project.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

March 28, 2007



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